No.

Supreme Court, U.S.
FILED

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IN THE

Supreme Court of The United States

OCTOBER TERM 1997

TADA SKARA,
Petitioner,

vs,

AKOP and OLGA MESTCHYAN,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Petitioner be entitled to a review of a Writ of Certiorari by the United State Supreme Court, where she was denied by the California Supreme Court, the California State Court of Appeals, after the Los Angeles Superior Court abused its discretion by declaring the Petitioner to be a vexatious litigant, requiring her to post bond, then dismissing the complaint and issuing a prefiling order after the case's dismissal, without jurisdiction?

2. Should the Petitioner be denied her Constitutional right to her day in court when, had the matter gone to trial, its result would have been *Per Se* prejudicial reversible error?

3. Since Section 391 (Vexatious Litigant) is Constitutional only because its provisions are reasonable, should it be construed reasonably to avoid depriving parties' right of due process?

4. If the Trial Court's decision was in error, because it construed Section 391 unreasonably, should the Petitioner be deprived her right of due process ?

5. Should Section 391 be strictly construed, although it was not, and what of the waiver of right to raise substantive grounds?

6. Can the entire case be resolved by the Respondents who are, as of this date, still in default for not responding to the complaint, by review of their very own motion for security?

7. What brand of justice would prohibit the taking of depositions preceding a hearing on a motion for security or, specifically in the Petitioner's case, the Lower Court's brand of justice based on the absence of evidence?

8. Was the decision of the Lower Court a miscarriage of justice, which this court should correct?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are Petitioner Tada Skara (hereinafter "SKARA"), an individual listed in the caption of the case on the cover page.

The Respondents are Akop and Olga Mestchyan (hereinafter "MESTCHYANS"), individuals listed in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Tada Skara respectfully petitions for a writ of certiorari to review the judgement of the Court of Appeal of the State of California, Second Appellate District, Division Three, filed November 6, 1997, following the denial of its petition for review without opinion by the California Supreme Court, filed January 21, 1998.

OPINIONS BELOW

The unpublished opinion of the California Court of Appeal, Second Appellate District, Division Three, filed on November 6, 1997, is reproduced herein as Appendix A1-A10. The order of the California Supreme Court summarily denying the Petitioner's petition for review January 21, 1998, is reproduced herein as Appendix B1. The pertinent judgements of the Superior Court of the State of California, County of Los Angeles, prefiling order (July 25, 1995) and judgement for the plaintiff's requirement to furnish security, are respectively reproduced herein as Appendix C1-C2 and C3-C5. The pertinent Constitutional provisions, the First Amendment and Fourteenth Amendment of the United States Constitution, as well as statutes involved, are set hereinafter.

JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C. § 1257 and United States Supreme Court Rule 10(c), this Court has jurisdiction to consider this petition for writ of certiorari to review the judgemnt of the Court of Appeal of the State of California, Second Appellate District, Division Three, filed November 6, 1997. The California Supreme Court summarily denied the Petitioner's request for review of the judgement of the Court of Appeal of the State of California, Second Appellate District, Division Three, on January 21, 1998.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the United States Constitution provides:

> CONGRESS SHALL MAKE NO LAW RESPECT AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH; OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

The Fourteenth Amendment to the United States Constitution provides:

> ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHERIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF THE CITIZENS OF THE UNITED STATES, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF THE LAW: NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

Statement of the Case

The complaint in this case alleges that, while the Petitioner was in Europe, Respondents trespassed onto her easement and property, dug into the easement and property, and caused her home to fall, all at great damage to her.

This complaint began in Los Angeles Municipal Court. The Respondents contended, and still contend, that this complaint cannot be prosecuted because the matter had been settled while the case was still pending in Municipal Court.

The record in this case includes Municipal Court Judge Barbara Meier's Minute Order, dated August 1, 1994, by which the Respondents' Demurrer was denied on the grounds that the relief requested **should have been sought by summary judgement**, as well as by the Petitioner's testimony, made on June 22, 1995, before the Honorable Joseph R. Kalin, Judge, by which she explained Judge Meier's ruling and repeatedly testified that she has not settled the lawsuit, as indicated by the transcript of the June 22, 1995, hearing. While Respondent's English language skills are poor, she attempted to explain to Judge Kalin that her signatures were procured on the pretext of consenting to tax treatment of monies paid to her for her quitclaiming any interest in the easement being used by the Respondents*. The Municipal Court transferred the Complaint to the Superior Court because the extent of the damages exceeded the jurisdiction of the Municipal Court.

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*Judge Kalin made much of a certain $25,000 payment, but this was only for the Petitioner quitclaiming any interest in the easement between her and the Mestchyan's property, and the quitclaim release specifically did not release the Mestchyan's from liability for damage to the Petitioner's home. Judge Kalin's unwillingness to look to look beyond Judge Janavs' ruling may have been justified, but it does not in any way validate Judge Janav's error in relying on an unauthenticated document for evidence, nor Judge Kalin's subsequent errors, discussed below. Petitioner, also, testified to the fact that the Municipal Court Judge Meier's had asked the Petitioner whether she had executed a "Settlement Agreement," and she responded "No."

Despite having been ordered to respond to the Superior Court complaint, by March 27, 1995, Respondents did not do so, and had not done so at the time of filing motions that led to the dismissal of the case, and are still in default. Instead, on March 24, 1995, they filed a Motion for Order requiring the Petitioner to Furnish Security and were able to persuade the Trial Court, on April 28, 1995, that Petitioner was required to post a security bond as a "vexatious" litigant. Petitioner, however, was able to file the $10,000 security bond ordered. Once she did so, on May 30, 1995, Respondents, on June 14, 1995, filed a motion to increase the bond, based upon essentially the same facts, and required that the Petitioner must post an additional $15,000. This defense motion was granted, requiring the Petitioner to post the additional bond within five days. Not being able to raise the $15,000, in five days, the Petitioner's case was dismissed by Minute Order dated July 25, 1995. Despite the fact that the law prohibited the filing of the motion until after this appeal was decided, Judge Kalin, nevertheless, ordered the release of the Security Bond to the Respondents by Minute Order dated October 24, 1995.

On July 25, 1995, also after the case had been dismissed, Respondents also filed a prefiling order prohibiting the Petitioner from filing any cases *in Pro Per*[2].

It is clear from the record that the Trial Court's finding that the Petitioner was a vexatious litigant, and the resulting dismissal, were based on five previous cases, four (4) of which were voluntarily dismissed by the Petitioner within two (2) years and one (1) of which was a negotiated settlement.

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[2]Respondents have continued to obtain unwarranted relief in this case. Petitioner recognizes that this Court may not be able to deal with all of these wrongs, but she is requesting that this Court vacate all rulings in this case from April 28, 1995, and to Order the return of the improperly Ordered $10,000 Bond that was submitted by the Petitioner.

On November 6, 1997, the Court of Appeal filed its opinion and decision. The Court of Appeal held, *inter alia*, that the Trial Court properly found the Petitioner Skara to be a Vexatious Litigant under Section 391, subdivision (b)(1) since Petitioner's alleged voluntary dismissal of her previous lawsuits counted as adverse determinations within the meaning of that code section. In so doing, the Court of Appeal relied on an earlier decision of a different district of the Court of Appeal in TOKERUD v. CAPITOL BANK SACRAMENTO (1995) 38 Cal. App. 4th 775. The TOKERUD Court stated, in part:

> "Plaintiff's contention [that] a voluntary dismissed action cannot be counted for the purposes of the vexatious litigant statute is contrary to the underlying intent of that legislation. The Vexatious Litigant statutes were enacted to require a person found a vexatious litigant to put up security for the reasonable expenses of a defendant who becomes the target of one of these obsessive and persistent litigants whose conduct can cause serious financial results to the unfortunate object of her attack. . . .The constant suer for himself becomes a serious problem to others than the defendant he dogs. By clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the tax payers who must provide [for] the courts. . . .An action which is ultimately dismissed by the plaintiff, with or without prejudice, is nevertheless a burden on the target of the litigation and the judicial system, albeit less of a burden than if the matter had proceeded to trial. A party who repeatedly files baseless actions only to dismiss them is no less vexatious than the party who follows the actions through to completion. The difference is one of degree, not kind." (TOKERUD, *supra* at 38 Cal. App 4th 779)

REASONS FOR GRANTING THE PETITION

THE UNITED STATES SUPREME COURT HAS THE AUTHORITY TO GRANT A PETITION FOR A WRIT OF CERTIORARI, TO REVIEW APPEALS FROM THE STATE COURT.

The Supreme Court of the United States is the only Federal Court authorized to hear appeals from the State courts (See 28 U.S.C., Section 1257(a). ELKS NATIONAL FOUNDATION v. WEBER, 942 F.2d 1480 (9th Circuit 1991). The Petitioner has a legal and Constitutional right to petition the Government for redress of grievances (See CHAMBERS v. BALTIMORE & O.R. Co. (1907) 207 U.S. 142, 148 [28 S.Ct. 34, 35, 52, L.ed. 143, 145]); Also, see the First Amendment of the United States Constitution. A right to due process clauses of the 5th and 14th Amendments and the Equal Protection Clause of the 14th Amendment. See VANN v. SHILLEH (2nd District 1975) 54 C.A. 3d 192; 126 Cal. Rptr 401, citing: FALLIS v. DEPT of MOTOR VEHICLES (1968 264 Cal. App. 2d 373, 383 (70 Cal. Rptr. 595). The Petitioner is being deprived of her legal and Constitutional Rights by the Superior Court, the Court of Appeals, and the State of California Supreme Court in an arbitrary and capricious manner, and that the Petitioner is without an adequate and effective remedy at law, a right to a continuance to have her day in court, even though she is entitled to a trial on the MERITS of her case. The United States Supreme Court should grant the Petitioner's Petition to the Government through a review by Petition for Writ of Certiorari, and where the Petitioner is being deprived of her rights and a continuance by the State Courts as a result of improperly alleged and unmerited claims that the Petitioner is a vexatious litigant. Claims that inevitably led to false rulings and orders by the courts, base on unsubstantiated allegations by the Respondents, whereby Petitioner was forced to provide an outrageous sum of money as security, thereby preventing unwarranted access to the courts.

PROCEDURAL HISTORY

The Court of Appeal's conclusion is that a voluntary dismissal of an action may be counted for purposes of the vexatious litigant statute will not withstand scrutiny.

In the first place, the plain meaning of the words used by the Legislature appear to preclude the Court of Appeal's interpretation. It is elementary that, in determining intent, the Court must first look to preclude the Court of Appeal's interpretation. It is elementary that in determining intent the Court first looks to the words of the Statute themselves. When the language is clear and unambiguous there is no need for construction. (PEOPLE v. WOODHEAD (1987) 43 Cal. 3d 1002, 1007-1008). Here, the Legislature has expressly stated that only previous actions "finally determined adversely" [to the purported vexatious litigant] are to be counted against him or her. This phrase means that there has been an adverse determination by a court. It is obviously impossible to construe this language as including a voluntary dismissal since (1) such a dismissal does not involve any DETERMINATION of the merits whatsoever and (2) it is not a FINAL determination inasmuch as the dismissal may be without prejudice to refiling the action.

Also, there is no Legislative intent presumed by the Court of Appeal. In construing a statute, the court must first look, *inter alia*, to Legislative history. HARRIS v. CAPITOL GROWTH INVESTORS XIV (1991) 52 Cal. 3d 1142). Here, neither the Respondents, nor the Court of Appeal in the instant case, nor the Court of Appeal in TOKERUD, *supra*, cite any evidence from the Legislative history that the Legislature in fact intended voluntary dismissals to count as final adverse determinations. Appellate counsel for the Petitioner, Johnathan P. Milberg was unable to locate any evidence of such Legislative intent. In the absence of such evidence, the presumed Legislative intent, like the Emperor's new clothes in the fairy tale, simply does not exist.

Further, counting voluntary dismissals as adverse determinations will not serve the Legislative purpose of discouraging vexatious and harassing litigation. In fact, it may produce an opposite result. Plaintiffs will be much less inclined to dismiss questionable lawsuits if they know that such dismissals will

make it significantly more difficult to file further lawsuits against completely different parties in the future unless they are able to post substantial security.

Contrary to the Court of Appeal, in TOKERUD, a comparison of vexatious litigant situations and malicious prosecution actions actually support Petitioner's position that voluntary dismissals should not count against her. It is quite true that one of the legal elements of the common tort of malicious prosecution is a favorable termination in favor of the defendants. (VILLA v. COLE (1992) 4 Cal. App. 4th 1327, 1335.) However, the concepts of a termination of a previous action in favor of the adverse party is necessarily much broader than the idea that the prior litigation has been adversely determined by a court. It must be assumed that the Legislature had in mind the existing law regarding a termination of a prior lawsuit in favor of the defendant for malicious prosecution purposes when it passed the vexatious litigant statutes (ESTATE of McDILL (1975) 14 Cal. 3d 831, 837.) It follows that the Legislature's failure to use this language, and its adoption instead of the narrower concept that prior litigation must not only be terminated, but adversely determined, against the Plaintiff was deliberate.

Finally, the Court of Appeal's interpretation should be rejected because it would have chilling effects on the rights of persons of limited means, who cannot afford counsel or to post the required security to have access to our courts and would be fundementally unfair. The application of this interpretation in the instant case is unfair. Petitioner Skara posted the $10,000 security initially required to protect the Defendant/Respondents Mestchyans against potential harassment. Yet, the court, nonetheless, increased the amount to $25,000 and then, when Skara could post that amount, dismissed her case without ever determining the merits of her case. Surely this is not the kind of scenario which this Highest Court ought to permit.

A VOLUNTARY DISMISSAL THAT IS PART OF A NEGOTIATED SETTLEMENT MAY NOT BE DEEMED AN ADVERSE DETERMINATION UNDER THE VEXATIOUS LITIGANT STATUTE.

Even assuming that the Court of Appeal was correct in holding that, generally, voluntary dismissals can be counted as adverse determinations under the Code of Civil Procedure, Section 391, one of the five (1) alleged voluntary dismissals is the purported negotiated settlement and still cannot be counted as an adverse determination. TOKERUD v. CAPITAL BANK of SACRAMENTO, *supra* at 38 Cal. App. 4th 779-780; VILLA v. COLE, *supra* at 4 Cal. App. 4th 1335.) Here, according to the Court of Appeal's opinion, the previous Municipal Court Case of SKARA v. MESTCHYAN, No. 93K16380, was resolved by a settlement agreement and mutual release under which the defendants agreed to pay Plaintiff Skara $25,000. Thus, this dismissal could not be counted against Skara under Section 391, although she never received any monies regarding the purported "Settlement Agreement."

Furthermore, this means that, even if the other cases could be counted, there would still be only four, and not the required five, adverse determinations so that Skara could not be declared a vexatious litigant under Section 391, subdivision (a)(1).

Since there were, at least, at best, only four (4) previous adverse determinations, the Superior Court erred as a matter of law in declaring Skara to be a vexatious litigant.

Under CCP §1717, regulating the payment of attorney fees, there is no prevailing party when the action has been voluntarily dismissed or dismissed pursuant to a settlement (see WITKIN, *California Procedure*, 4th ed., Judgement §178, p.698)--which was the case in most if not all of the Petitioner's cases.

THE FAILURE OF THE TRIAL COURT TO REQUIRE THE MESTCHYANS TO PROVE THAT THIS CASE HAD PREVIOUSLY BEEN SETTLED WAS AN ERROR OF LAW.

Finally, on the second prong of Section 391, which required the Mestchyans to prove the improbability of the Petitioner prevailing, both the Trial Court and Court of Appeal chose to ignore the fact that it was the Mestchyans' burden to prove improbability of success, not the Petitioner's burden to prove its probability; and the Mestchyans had not presented any evidence to establish that the case had been previously settled settled on October 31, 1992, which purported settlement was the foundation for Judge Janavs' decision that it was improbable that Petitioner would prevail in her lawsuit.

Judge Janavs reliance on the "settlement" is contradicted by the fact that Judge Barbara Meiers transferred the case from Municipal Court to the Superior Court; and Judge Meiers, after denying the Mestchyans' demurrer, admonished them to file a motion for summary judgement, within sixty (60) days, if they truly believed that the case had been settled.

The Mestchyans certainly did not present any evidence regarding the substantive merits of the case in support of their motion. They did not present any declarations of their own, or of other witnesses or experts. The only thing they presented was the declaration of their attorney, Carol G. Arnold, who purported to authenticate a copy of the purported settlement agreement.

The Respondents' attorney stated in her declaration that her Exhibit O was a true and correct copy of the purported "settlement agreement." Carol Arnold, of the firm Staitman, Snyder & Tannenbaum, was retained by Republic Insurance, whom this Petitioner never had a suit against.

Evidence Code §1401(b) requires authentication of writings "before secondary evidence of its content may be received into evidence." Evidence Code §1413, requires authentication to be made by someone "who saw the writing made or executed,

including a subscribing witness."

This never happened, and though the lower court chose to follow Judge Janavs' decision, the question arises why she opted not to validate a prefiling order against this Petitioner, instead choosing to recuse herself from the case. Therefore, meaning that perhaps the Court of Appeal should have applied closer scrutiny to this matter in pursuit of a just result.

As stated by the California Supreme Court in CONTINENTAL BAKING Co. v. KATZ (1968) 68 Cal. 2d 512, 525-6:

> "documents must be authenticated in some fashion before they are admissible in evidence. . . .In the case at bar the court simply took counsel's word for it that he could have a witness lay the necessary foundation and that he, the attorney, had obtained documents from the general counsel of Continental so that they were 'business records . . . While we have just as much faith in counsel's sincerity as the trial court evidently had, such faith does not take the place of testimony . . .The reception of documents was therefore erroneous." [3]

In this case, Judge Janavs' faith does not take the place of proper evidence and her acceptance of the documents as evidence was equally erroneous.

The purported "settlement" agreement was not executed by Ms. Arnold, because Ms. Arnold's name does not appear on it. [4]

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[3] In O'LASKEY v. SORTINO (1990 2d Dist) 224 CA 3d 241, 249, this District followed Continental Baking to affirm the exclusion of evidence of a tape recording because it was not authenticated by its investigator-maker but only by the attorney who had *retained* the investigator. The situation here is no different.

[4] The only names appearing on this writing are those of Respondents, Appellant, Appellant's children, and attorneys Robert J. McKay (Respondents' then attorney) and Steven Sugars (Appellant's then attorney).

Her declaration does not state that she witnessed the making or execution of the purported "settlement agreement." Only the Mestchyans themselves could have proven the existence of a settlement agreement or authenticated it by making an oath under penalty of perjury. They chose not to make that oath, just as they chose not to bring a summary judgement motion based on the purported settlement agreement. Ms Arnold knew that she could not authenticate it and her declaration, like many of the Mestchyans' motions, were intended to mislead. As also indicated by the Chicago Title's (Petitioner's Insurance Co.) payment of $250,000 to the Bank of America, fraudulently for the Mestchyans, and attorneys, as part of this action. Unfortunately, the trial court was willing to be misled.

MULLER v. TANNER (1969) 2 Cal. App 3d 445 [5] held that because the defendant-movant failed to present any evidence that there was no reasonable probability that the plaintiff would prevail, the dismissal of the case, pursuant to Section 391, was error of law. [6]

MULLER held that

> " 'the ultimate facts . . . must be proved . . . by the affidavit, by showing the probatory facts upon which each ultimate fact depends. . . .' " (2 Cal. App. 3d at 464, citing RICKETSON v. RICHARDSON (1864) 24 Cal. 149, 153)

The lower court presumed that "October 31, 1992 settlement agreement of the Municipal Court action" actually existed. There was absolutely no evidence to establish this.

The lower court attempted to rationalize Judge Janavs' decision on the grounds that there was an "inconsistency" between the Petitioner's complaint, which had not been answered by the Mestchyans, and her position in the appeal. This matter was discussed in the Reply Brief, including the fact that the Petitioner *testified* that she had not signed a settlement agreement (as evidenced by the transcript of hearing, p. 28:13-14, 29:12-15).

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[5] MULLER was discussed in the Reply, but not by the lower court.

[6] MULLER does not address a "new" issue. It provides further support for the argument of the Opening Brief that the Mestchyans had failed to meet their burden of proof under Section 391. MULLER is discussed in the Reply at pp. 18-21.

However, any inconsistency is irrelevant. Complaints can as a matter of law be amended to conform to proof up until the time of the trial and even after. "The California courts have been extremely liberal in allowing amendments to conform to proof" (WITKIN, California Procedure, 4th ed., Pleading §1143, pp. 598-600 and cases cited therein). And, as pointed out above, it was the Mestchyans' burden to prove that the case had been previously settled, and they did not.

THE TRIAL COURT'S RULINGS RESULTED IN A MISCARRIAGE OF JUSTICE

There is only one way to describe the proceedings below: they are a miscarriage of justice. Article VI, Section 13, which formally defines miscarriage of justice, provides that a judgement will be set aside due to improper instructions to the trier of fact or improper rejection or admission of evidence, if the reviewing court is "of opinion that the error complained of has resulted in a miscarriage of justice." The cumulative errors of the Trial Court in this case reek of miscarriage of justice, and a miscarriage of justice occurs is formally defined as existing if the judgement reasonably probably would have been more favorable to the losing party, had the court's errors not been made.

In this case, there was no evidence to support Judge Janavs' ruling that Appellant's complaint would probably fail. But even if there was, when evidence is erroneously admitted, or, as in this case, when non-evidence is treated as evidence, the issue is no longer whether there was any evidence to support the judgement, as Respondents contend in their Opening Brief, but whether the impropriety adversely effected the judgement. Thus, the reviewing court is not bound by the substantial evidence rule:

> "We do not . . . look for sufficiency of evidence in support of the verdict . . . we must assume that the [trier of fact] might have believed the evidence favorable to the losing party." (MAUPIN v. WIDLING (1987 2d Dist.) 192 Cal. App. 3d 568, 573, citing HENDERSON v. HARNINSCHFEGER (1974) 12 Cal. 3d 663, 674, which in turn cites O'MEARA v. SWORTFIGUER (1923) 191 Cal. 12, 15).

CONCLUSION

For the foregoing reasons, this court should grant review of the Petition for Writ of Certiorari, hold that voluntary termination and negotiated settlement(s) may not be counted against a plaintiff under the California Supreme Court of Appeal and the Superior Court, and remand this case with instructions to allow this Petitioner her day in court as to proceed with her lawsuit.

Wherefore, the Petitioner prays that her Petition for Writ of Certiorari is granted by this Honorable Court, and that this Court will issue an order remanding this case back to the California State Supreme Court, with directions and instructions to remand the matter back to the Superior Court, for a trial on the merits of the complaint. The Respondents should be further ordered to Show Cause, if there is any reason, why relief should not be granted to the Petitioner and why the $10,000 swindled from her by attorneys representing Republic Insurance cannot be returned , as prayed for within the Petition, without prejudice towards the Petitioner, forthwith.

Numerous other Superior Court Justices, the Honorable Paul Boland, and Dau, have ruled that this Petitoner is not a vexatious litigant, since this matter began, in other unrelated matters where attorneys citing this case have requested this Petitioner to furnish security. Petitioner, therefore respectfully urges this Court to issue a Writ of Certiorari on the questions presented and allow this Petitioner to pursue her right to her meritable and warranted (for the sake of justice) day in court .

Dated: 6-17-1998.

Respectfully submitted,

Tada Skara

TADA SKARA
Petitioner In Pro Per

APPENDIX A

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

Court of Appeal - Second Dist.
FILED
NOV - 6 1997
Joseph A. Lane Clerk

Deputy Clerk

TADA SKARA,

Plaintiff and Appellant,

v.

AKOP and OLGA MESTCHYAN,

Defendants and Respondents.

B096350 (Consolidated on appeal with B097068)
(Super. Ct. No. BC111227 [consolidate with No. BC96113])

APPEAL from the orders of the Superior Court of Los Angeles County. Joseph R. Kalin, Judge, and Dzintra Janavs, Judge. Affirmed.

David Burkenroad; Tada Skara, *in pro. per.*, for Plaintiff and Appellant.

Staitman, Snyder & Tannenbaum and Gerald P. Peters, for Defendants and Respondents.

Plaintiff and Appellant Tada Skara (Skara) appeals an order dismissing her action against Akop and Olga Mestchyan (the Mestchyans) after she was declared a vexatious litigant and failed to post the required security. Skara also seeks review of various postdismissal orders.

The essential issue presented is whether the trial court properly found Skara is a vexatious litigant.

The record amply supports the trial court's determination. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. The previous action.

Skara and the Mestchyans own adjoining properties. Skara claimed an easement over a portion of the Mestchyans' property. In February 1991, the Mestchyans constructed a concrete brick wall on the easterly border of their property.

Skara filed an action against the Mestchyans in the municipal court, alleging the Mestchyan's newly built wall encroached on the Skara property by five inches, and the construction resulted in the destruction of Skara's tree.

The municipal court action was resolved by a settlement agreement and mutual release, dated October 26, 1992. In essence, the Mestchyans agreed to pay $25,000 to Skara, who agreed to execute and deliver to the Mestchyans a quitclaim deed with respect to the disputed real property. In the agreement, the parties expressly agreed "that the Wall is the exclusive property of the Mestchyans, and that the Wall will not be removed but shall remain and may be maintained in its present location at the pleasure of the Mestchyans, or their successors in interest."

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[1] The facts are gleaned from the record on appeal. With respect to Skara's pending motion for augmentation, the motion is granted with respect to all relevant and admissible evidence.

2. The instant action.

On April 30, 1993, Skara filed a superior court action in propria persona against the Mestchyans.

The operative second amended complaint, filed March 17, 1995, pled causes of action against the Mestchyans and Chicago Title Insurance Company for interference/obstruction of easement, willful trespass, negligent trespass, excavation/removal of lateral support, actual fraud, breach of fiduciary duty and constructive fraud, breach of covenant of good faith and fair dealing, and cancellation of quitclaim deed. Skara alleged, inter alia, she was improperly induced to sign the October 1992 settlement agreement. At the time the amended pleading was filed, Skara was represented by counsel.

a. The Mestchyans' motion for an order requiring Skara to post security.

On March 24, 1995, the Mestchyans filed a motion for an order requiring Skara to post security. The motion was made on the grounds that Skara is a vexatious litigant and there is no reasonable probability that she will prevail in this litigation against the Mestchyans. They argued Skara's complaint was groundless because she was attempting to relitigate the same substantive issues which had been litigated and settled in the municipal court action.

The supporting declaration of attorney Carol Arnold stated that such an index search revealed Skara had been involved in 16 different lawsuits since 1990, and that at least five of those actions had been determined adversely to Skara or unjustifiably had been permitted to remain pending for at least two years.

b. Trial court's ruling.

On April 28, 1995, the motion came for hearing. The trial court granted the Mestchyans' motion. It ruled: Skara was deemed

a vexatious litigant on two ground: Skara had commenced in propria persona a minimum of five litigations in the prior seven-year period which were either finally determined adversely to Skara or unjustifiably permitted to remain pending at least two years (Code Civ. Proc., § 391, subd.(b)(1);[2] and Skara was attempting to relitigate in propria persona in the current matter the issues which had been resolved by the executed settlement agreement and release in the prior municipal court case involving the same parties (§ 391, subd. (b)(2).)

The trial court further found "there was no reasonable probability that [Skara] would prevail in the current matter against the Mestchyan defendants."

The trial court ordered Skara to provide security in the sum of $10,000, without prejudice to the Mestchyans' right to seek a modification of the security amount at a later time.

c. Subsequent events.

Skara posted the required $10,000 security.

The Mestchyans thereafter filed a motion to increase the security amount. The motion was granted and Skara was directed to post an additional $15,000.

Skara failed to post the additional security and the Mestchyans applied ex parte for dismissal of the action. The trial court granted the application.

On June 29, 1995, the trial court dismissed Skara's action to the Mestchyans, with prejudice.

d. Skara's notices of appeal.

On August 18, 1995, Skara filed her first notice of appeal, seeking review of: (1) an order resetting the motion the motion for

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[2] All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

additional security; (2) an order granting the Mestchyans' motion for additional security; (3) the order dismissing the Mestchyans from the action; and (4) the order granting the Mestchyans' ex parte application for a prefiling order prohibiting Skara from filing a new litigation without leave of court.

On October 30, 1995, Skara filed another notice of appeal, specifying the following three orders: (1) a September 13, 1995 order on her motion to tax costs awarding attorney fees of $16,979 to the Mestchyans; (2) an October 24, 1995 order denying reconsideration of the September 13, 1995 ruling; and (3) an October 24, 1995 order granting the Mestchyans' motion for release of the $10,000 security deposit posted by Skara.

On December 11, 1995, Skara filed another notice of appeal, seeking review of the following two orders: (1) an October 26, 1995 order directing the clerk to pay the sum of $10,000 and accrued interest to the Mestchyans' attorneys; and (2) a December 1, 1995 order, taking off calendar Skara's motion to set aside the order for release of the $10,000.[3]

CONTENTIONS

Skara contends: she is not a vexatious litigant within the meaning of the statute; the settlement agreement was obtained through fraud and is voidable; and the Mestchyans are liable for the alleged fraud committed by their attorney, who was their agent.

DISCUSSION

1. The issue before this court.

Skara's opening brief states the issue presented is whether

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[3] Chicago Title Insurance Company is not a party to this appeal, which concerns the dismissal of Skara's action against the Mestchyans.

she was "improperly or wrongly labeled a 'vexatious litigant' by the Court in the underlying matter." Skara's opening brief has not briefed the numerous other issues and rulings specified in her three notices of appeal. Accordingly, those issues are waived. (In re Marriage of Schroeder (1987) 192 Cal. App. 3d 1154, 1164; Tisher v. California Horse Racing Bd. (1991) 231 Cal. App. 3d 349, 361.)

2. General principles.

A vexatious litigant is a person who engages in, or has engaged in, any of the four types of conduct specified in section 391, subdivision (b).

The statute defines a vexatious litigant as a "person who does any of the following: [¶] (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. [¶] (2) After a litigation has been finally determined against a person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined. [¶] (3) In any litigation while acting in propria persona, repeatedly files unmeritous motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. [¶] (4) Has previously been declared a vexatious litigant by any state of federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence." (§391, subd.(b).)

Although "the second and third acts described in the statute refer to a person acting in propria persona in the very proceeding in which a defendant attempts to obtain an order requiring the plaintiff to furnish security, the first and fourth do

not. A plain reading of the statute indicates the Legislature intended it to apply, at least to the first and fourth described acts (§391, subds. (b)(1) and (b)(4)), to persons currently represented by counsel whose conduct was vexatious when they represented themselves in the past." (*Camerado Ins. Agency, Inc.* v. *Superior Court* (1993) 12 Cal. App. 4th 838, 842.)

A motion for an order requiring security "must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant." (§391.1.)

If the trial court "determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix." (§391.3.)

When "security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished." (§391.4.)

3. Trial court properly found Skara is a vexatious litigant pursuant to section 391, subdivision (b)(1).

As indicated, the trial court found Skara is a vexatious litigant under section 391, subdivisions (b)(1) and (b)(2). The first ground, under subdivision (b)(1), clearly was proper and sufficient.[4]

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[4] It would appear the subdivision (b)(2) ground was inapplicable. Here, although Skara was attempting to relitigate the issues raised in the municipal court action, she was not relitigating them in propria persona. (§391, subd.(b)(2).) The record reflects that at the time of filing of the second amended complaint, and at the time the trial court declared Skara was a vexatious litigant in this action, she was represented by counsel.

The trial court found in the past seven years, Skara filed in propria persona at least five cases in which she did not prevail. Those cases are: *Skara* v. *Mesereau,* No. 94K08871, which was dismissed by Skara seven months after filing; *Skara* v. *City Hall,* No. 92K23711, dismissed by Skara four months after filing; *Skara* v. *Star,* No. BC59251, dismissed after two and a half-months; *Skara* v. *Mestchyan,* No. 93K16380, dismissed by Skara within two years.

Skara argues "[c]learly what is happening in virtually every matter which the [Mestchyans] herein cited in their Noticed Motion for Security in the underlying matter is that [Skara] filed an action to preserve rights, determined that the case was not as meritous as she had originally believed when the matters were filed, and then took the responsible action, and dismissed the action." Therefore, according to Skara, "none of the 16 cases [in which she has been involved] constitute grounds upon which to designate [her] a 'vexatious,' and subsequently require her to post a security bond."

This very argument was rejected in *Tokerud* v. *Capitol Bank Sacramento* (1995) 38 Cal. App. 4th 775, 779, which stated "[p]laintiff's contention a voluntarily dismissed action cannot be counted for purposes of the vexatious litigant statute is contrary to the underlying intent of the legislation. 'The vexatious litigant statutes were enacted to require a person found to be a vexatious litigant to put up security for the reasonable expenses of a defendant who becomes the target of one of these obsessive and persistent litigants whose conduct can cause serious financial results to the unfortunate object of his attack.' [Citation.]...[¶] An action which is ultimately dismissed by the plaintiff, with or without prejudice, is nevertheless a burden on the target of the litigation and the judicial system, albeit less than a burden than if the matter had proceeded to trial. *A party who repeatedly files baseless actions only to dismiss them is no less vexatious than the party who follows the actions through to completion.* The difference is one of degree, not kind." (Italics added) *Tokerud* also analogized to the "comparable context of a malicious prosecution action, [wherein] a voluntary, unilateral dismissal of the underlying

dispute is generally considered a termination in favor of the defendant. [Citation.]" (Ibid.)

Tokerud's rationale is sound. Merely because Skara voluntarily dismissed her numerous actions and thereby avoided unfavorable judicial rulings in those cases does not mean those actions were not determined adversely to Skara within the meaning of section 391, subdivision (b)(1). Thus, the trial court properly relied on those five dismissed cases to declare Skara a vexatious litigant.[5]

5. Trial court properly found Skara has no reasonable probability of prevailing herein.

The remaining issue is whether the trial court properly concluded Skara has no reasonable probability of prevailing against the Mestchyans. (§391.3.)

As indicated, Skara's theory is that the Mestchyans' alleged fraud renders the settlement of the municipal court action voidable and open to collateral attack. Not surprisingly, the trial court was not surprised by Skara's position.

In the operative second amended complaint, Skara alleged in paragraph 83: "Unaware of the true facts, *plaintiff, her daughter, and her son were induced to do and did the following: (1) signed a settlement agreement and release on about October 31, 1992,* which agreement had been prepared by attorney McKay, (2) received payment of only $25,000 from attorney McKay and Mestchyans in his office on December 24, 1992, and (3) signed a quitclaim deed in attorney McKay's office on December 24, 1992,...." (Italics added.)

---

[5] Skara also seeks to rely on a March 11, 1997 ruling by Judge Boland in a different superior court case, which states: "[I]t appears that [Skara] dismisses her many suits prior to the occurrence of an adverse resolution. Thus , [Skara] cannot be declared vexatious under [section 391, subdivision (b)(1)]." However, Judge Boland's ruling is at odds with *Tokerud, supra, 38 Cal. App. 4th 775*, discussed above. Moreover, Judge Boland's decision does not bind an appellate court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450, 455.)

The opening brief takes a completely inconsistent position. Now, Skara "claims that she never executed the Settlement Agreement, and that the signatures thereon are actually a copy of the signatures on a letter dated October 31, 1992."

Skara's contention her signature on the October 31, 1992, settlement agreement is a forgery flies in the face of her allegation that she was improperly induced to sign the October 31, 1992 settlement agreement.

Given these inconsistencies, it is readily apparent that Skara has no reasonable probability of being able to set aside the October 31, 1992 settlement agreement of the municipal court action in order to relitigate the issues resolved in the earlier case.

5. Remaining arguments not reached.

It is unnecessary to reach any remaining issues. We specifically do not reach any of Skara's arguments which were raised for the first time in the reply brief. We are aware Skara filed the opening brief in propria persona, and that the reply brief was authored by her newly retained counsel.

However, an appellant representing herself in propria persona "'is entitled to the same, but no greater, consideration than other litigants and attorneys. [Citations.]' [Citation.]" (*Bistawros v. Greenberg* (1987) 189 Cal. App. 3d 189, 193; accord *Harding v. Collazo* (1986) 177 Cal. App. 3d 1044, 1054-1056.) Therefore, any issues not raised in Skara's opening brief are waived. (*Tisher, supra*, 231 Cal. App. 3d at p. 361.)

DISPOSITION

The June 29, 1995 order of dismissal, and all subsequent orders specified in the notices of appeal, are affirmed. The Mestchyans to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

we concur:

CROSKEY, J. KITCHING, J.

APPENDIX B

Second Appellate District, Division Three,
No. B096350
S066508

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
Jan 21, 1998
Robert Wandruff Clerk
DEPUTY

TADA SKARA, Appellant

v.

AKOP MESTCHYAN Et Al., Respondents

Petition for review DENIED.

GEORGE
Chief Justice

APPENDIX C

STAITMAN, SNYDER & TANNENBAUM
16633 Ventura Boulevard, Suite 1401
Encino, California 91436-1840
(818)981-5300 (213) 872-3530
CAROL G. ARNOLD, NO. 128379

Attorneys for Defendants
AKOP MESTCHYAN and OLGA MESTCHYAN

FILED
JUL 25 1995
By A.L. RUNS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TADA SKARA, Plaintiff, vs. CHICAGO TITLE INSURANCE, Defendant. AND CONSOLIDATED CASE.	No. BC 096113 (Consolidated with Case No. BC 111227) (Assigned to Judge Joseph R. Kalin, Dept 55) ORDER

Date: July 17, 1995 Time: 8:15 a.m. Dept.: 55

Ex Parte Application having been made by defendants Akop Mestchyan and Olga Mestchyan for a prefiling order barring plaintiff from filing any new actions in the State of California, in propria persona, without first obtaining leave of court, and good cause appearing therefor:

IT IS HEREBY ORDERED that the plaintiff must first obtain leave of court before filing any new actions in the State of California, in propria persona, pursuant to Code of Civil Procedure §391.7(a).

IT IS FURTHER ORDERED that the clerk of the court is to provide the Judicial Council with a copy of this prefiling order pursuant to Code of Civil Procedure §391.7(d).

IT IS FURTHER ORDERED that the Mestchyan defendants serve plaintiff with a copy of the executed order.

DATED: JULY 24, 1995

S/_____
Judge of the Superior Court
JOSEPH R. KALIN, JUDGE

STAITMAN, SNYDER & TANNENBAUM
15760 Ventura Boulevard, Suite 601
Encino, California 91436-3062
CAROL G. ARNOLD, NO. 128379

Attorneys for Defendants
AKOP MESTCHYAN and OLGA MESTCHYAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FILED
Los Angeles Superior Court
MAY 11 1995
JOHN A. CLARK, CLERK
BY H. HINAGA, DEPUTY

TADA SKARA, Plaintiff, vs. AKOP and OLGA MESTCHYAN, et al, Defendants. AND RELATED CASE.	No. BC111227 (Related to Case No. BC096113) (Assigned to Judge Dzintra Janavs - Dept. 15) NOTICE OF RULING

Date: April 28, 1995 Time: 8:30 a.m. Dept.: 15

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on April 28, 1995, at 8:30 a.m., four motions by defendants Akop Mestchyan and Olga Mestchyan came on regularly for hearing in Department 15 of the Los Angeles Superior Court, Central District, the Honorable Dzintra Janavs, judge presiding, as follows:

1. Motion for an Order requiring the Plaintiff to furnish

security (requesting that the plaintiff be deemed a vexatious litigant and be ordered to provide security);

2. Motion for Protective Order re Plaintiff's First Demand for Inspection;

3. Motion to Quash Subpoena Duces Tecum Served on Non-Party Bank of America; and,

4. Motion to Quash Subpoena Duces Tecum Served on Chicago Title Insurance Company.

After hearing arguments and considering the papers on file herein, the court rules as follows:

1. The Mestchyan defendants' Motion for an Order Requiring Plaintiff to Furnish Security (vexatious litigant) was granted.

(a) The plaintiff was deemed a vexatious litigant on on two grounds:

(i) Pursuant to Code of Civil Procedure §391, subdivision (b)(1), the plaintiff commenced In Propria Persona a minimum of five litigations in the prior seven year period which were either finally determined adversely to plaintiff or unjustifiably permitted to remain pending at least two years; and,

(ii) Pursuant to Code of Civil Procedure §391, subdivision (b)(2), the plaintiff was attempting to relitigate In Propria Persona in the current matter the issues which had been resolved by the executed Settlement and Release in the prior municipal court case involving the same parties.

(b) The court found that there was reasonable probability that the plaintiff would prevail in the current matter against the Mestchyan defendants;

(c) The court ordered the plaintiff to provide security in the amount of $10,000.00 to be filed with the court on or before May 30, 1995, which amount was ordered without prejudice to the Mestchyan defendants' right to seek a modification of the security amount at a later time;

(d) The request for a pre-filing order was denied.

(2) The court set an Order to Show Cause why plaintiff's counsel, Mr. Bryant, should not be held in contempt of court, to be heard on May 15, 1995, at 8:30 a.m. in Department 15 of this court. Additionally, the plaintiff was ordered to appear to apprise the court of her decision concerning her legal representation.

(3) As a result of the court's order scheduling the OSC, all matters relating to the Mestchyan defendants, including discovery and a ruling on the remaining three motions on calendar, were stayed.

(5) Finally, the court set a Further Status Conference in this and the related action for July 10, 1995, at 8:30 a.m. in Department 15 of this court.

Dated: May 11, 1995

STAITMAN, SNYDER & TANNENBAUM

By: /S/_____
CAROL G. ARNOLD
Attorneys for Defendants
Akop Mestchyan and Olga Mestchyan

APPENDIX D

CASE HISTORY REPORT

Los Angeles Superior Court
Civil Division

Case Number: BC096113 Tada Skara vs Chicago Title Co,et al

CASE HISTORY

Date	Activity
	A true copy of this minute order is sent to counsel
	.
	MOTION RELEASING SECURITY IS GRANTED
	.
	MOTION FOR RECONSIDERATION IS DENIED
	.
	Later the Court rules as follows:
	.
	by the Court.
	The Motions are argued and taken under submission
	.
	SEEKING RELEASE OF SECURITY AND FOR SANCTIONS: 391, ET. SEQ. FOR AN ORDER RESTRAINING PLAINTIFF FROM THE MESTCHYAN DEFENDANTS THE SECURITY PROVIDED PER CCP MOTION BY MESTCHYAN DEFENDANTS FOR AN ORDER RELEASING
10/24/95	*Event Complete*
	Motion Hearing
	Motion Denied
01/24/96	*Document Filed*
	Order MEMO
	Attorney for Defendant/Respondent
	AWARDING COSTS
Filed By	Staitman, Snyder & Tannenbaum
	Attorney for Defendant/Respondent
On Behalf of	Akop Mestchyan Defendant
	Olga Mestchyan Defendant

APPENDIX E

LAW OFFICE OF DAVID BURKENROAD

Tel 310)313-9113 Facsimile (310)390-5794
11514 Vienna Wy, L.A. CA 90066-2113

August 14, 1997

California Court of Appeal
Second District, Division Three
300 S. Spring Street
Floor 2, North Tower
Los Angeles, CA 90013-1213

Dear Justices Klein, Croskey, and Kitching:

I am writing the court to express my concern about the court's willingness to adopt the findings of Judge Janavs with regard to the purported Settlement Agreement, seemingly, without having read Appellant's Reply Brief. (I remind the Court that the notice scheduling the oral-argument hearing date was mailed before the Reply Brief was due to be filed.)

On August 13, I orally argued the principal facts and law regarding the purported Agreement, namely that it was not evidence because it had not been authenticated (see Reply, pp. 18-21, citing Muller v. Tanner (1969) 2 CA 3d 445) and that Appellant had challenged its authenticity before Judge Kalin (see Reply, p. 4, Transcript of June 22, 1995, hearing Exhibit EE, p. 28:13-14, 29:12-15).

In deference to the Court's request not to go over matters set forth in the Briefs, I did not orally argue numerous relevant facts and arguments. I respectfully request that the Court review Appellant's Reply Brief and the Record on Appeal, which refers to the following:

At the oral-argument hearing this Court expressed its opinion that the Appellant should have challenged the Agreement, yet the Mestchyans, who had much more incentive to enforce it, did not do so by having the case dismissed, nor did they take up Judge Meiers' invitation to have the case resolved by a summary judgement motion. In fact, an attempt was made to dismiss the case, but it was rejected by the Municipal Court (see Reply, pp. 4, 14, 17, 19, Record, Exhibits B and G).

Also, if the Agreement had settled the case, why did Judge Meiers transfer the case from the Municipal Court to the Superior Court? (see Reply, p. 5, Record, Exhibit A)

Finally, the Court was very much interested in knowing the facts regarding the Agreement. In and of itself, this suggests that the case should be remanded, to allow the Agreement's authenticity, and the other facts at issue to be tried, and ot give Appellant her due-process right to her day in court.

I apologize for having to do this, but I believe that the interests of justice require it.

I look forward to your decision.

Truly yours,

/S/
DAVID BURKENROAD

cc: Gerald P. Peters

APPENDIX F

OCT-23-1997 COURT PROGRAM SERVICES

Judicial Council of California
Administrative Office of the Courts

Trial Court Services Division
303 Second Street, South Tower ♦ San Francisco, CA 94107-1366
Telephone 415-904-6022 ♦ Fax 415-396-9281 ♦ TDD 415-396-9288

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

DENNIS B. JONES
Chief Deputy Director

KIRI TORRE
Director
Trial Court Services

FAX TRANSMITTAL

TO: Ms. Tada Skara (213)489-2051

FROM: Vicky Muzny
Court Services Analyst

DATE: October 23, 1997

SUBJECT: Vexatious Litigant List

At your request, I reviewed the Vexatious Litigant Lists published in 1996 and 1997. Your name does not appear on any of these lists. I hope this information is helpful to you.

COURT PROGRAM SERVICES
Judicial Council of California
Administrative Office of the Courts

Trial Court Services Division
303 Second Street, South Tower ♦ San Francisco, CA 94107-1366
Telephone 415-904-6022 ♦ Fax 415-396-9281 ♦ TDD 415-396-9288

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Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

DENNIS B. JONES
Chief Deputy Director

KIRI TORRE
Director
Trial Court Services

TO: Each Clerk of the Courts of Appeal
Each Clerk/Executive Officer of the Superior Courts
Each Municipal Court Clerk/Court Administrator
Commission on Judicial Performance

FROM: Vicky Muzny, Court Services Analyst
Court Program Services Unit

DATE: April 15, 1998

RE: Dissemination of Vexatious Litigant Prefiling Orders List

Enclosed please find the latest Vexatious Litigant Prefiling Orders Lists required to be compiled and desseminated by the Judicial Council pursuant to Code of Civil Procedure section 391.7. This list updates the list distributed on January 16, 1998. There are 11 additional names of individuals or organizations against whom the courts in the state entered orders prohibitiing future filings without leave of the presiding judge. These new names have been underlined to make them easier to identify. The list includes orders that were entered through March 31, 1998, and received by the Administrative Office of the Courts prior to publishing.

The Judicial Council is required to compile and disseminate to the clerks of the courts a list of those orders that contain a future filings prohibition. Only these orders are included on this list. The list will indicate if a prefiling order is limited to certain cases or jurisdictions. If a court send an order that does not contain a future filings prohibition, i.e., it contains a statement that the individual has been declared a vexatious litigant, or a requirement that a bond be posted, but no future filings prohibition, it will be returned to the sending court and the name of the individual subject to that order will not be included on the list. Prefiling orders are to be sent to:

Administrative Office of the Courts
303 Second Street, South Tower
San Franciso, California 94107
ATTN: Vicky Muzny
(Fax: 415-904-6037)

We would appreciate the court using form MC-700 Prefiling Order - Vexatious Litigant, for your prefiling orders. If you have any questions, please contact Vicky Muzny at (415) 396-9308. If there is a specific indiviual at your court to whom you would like to have the list sent, please let Vicky know, and she will add him or her to the mailing list. Thank you for your efforts to keep this list up to date.

[At NO place in the alphabetical multi-page Vexatious Litigant List, which was accompanied with these letters, is the name TADA SKARA, or any similar name for that matter]